

**REMARKS/ARGUMENTS:**

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Examiner's Rejections:

The examiner allowed claims 8-14 and indicated that claims 4 and 7 would be allowable if rewritten in independent form. The examiner rejected claims 1-3, 5 and 6 under 35 USC §102(b) as being anticipated by US Patent 4,974,348 by Wallace.

Amendments to the Specification:

The amendments to the Specification are for correcting informalities. In particular, the capitalized form of "Fig." was not used consistently throughout the specification. The applicant has attempted to change them to this format: "Fig." Other informalities were corrected in the specification such as misspellings and the like.

Amendments to the Claims:

Amendments to claims 1-14 are for correcting informalities. New claim 15 is intended to capture the limitations of claims 1 and 4. New claim 16 is intended to capture the limitations of claim 1 and the first additional limitation of claim 7. New claim 17 is intended to capture the limitations of claim 1 and the second additional limitation of claim 7. New claim 18 is intended to capture the limitations of claim 1 and both of the additional limitations of claim 7.

Claims 1-3, 5 and 6, 35 USC §102(b):

The examiner rejected claims 1-3, 5 and 6 under 35 USC §102(b) as being anticipated by US Patent 4,974,348 by Wallace. MPEP §2131 states that “To anticipate a claim, the reference must teach every element of the claim.” The Federal Circuit Court of Appeals for the Federal Circuit has stated that “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The applicant has inspected US Patent 4,974,348 by Wallace and the applicant is not able to find where US Patent 4,974,348 teaches an adjustable auger assembly. The text of that patent, augers 27 and 28 are referred to in passing in column 2, beginning at line 22, with text beginning in column 2 at line 32 and with text beginning in column 3 at line 55. None of those references describe augers 27 and 28 as being mounted to the support frame of the Wallace trencher in an adjustable manner for adjustment between a lower position and an upper position. Wallace appears to teach the conventional method for controlling trench depth. With the conventional method, trench depth is controlled by changing the angle of a digging boom between a shallow angle for digging a shallow trench and an upright angle for digging a deep trench. With the applicant’s trencher unit, an operator varies trench depth not by varying the angle of a trencher boom but by varying the depth at which an upright frame and digging chain penetrate the working surface. For this to work well, the applicant’s trencher unit has adjustable augers so that the augers may be placed at a level corresponding to the top of the desired trench. With the conventional method, the upper portion of the trencher boom is proximate to the top of the trench regardless of trench depth and thus the position of the augers is not adjustable. As noted in the application, this upright orientation of the digging chain allows the excavation of curved trench sections. Wallace does not teach

Appl. No. 10/771,800  
Amdt. dated 3 February 2006  
Reply to Office action of January 4, 2006

adjustable augers. The language of claim one of this application includes a limitation for at least one adjustable auger. This feature is neither taught or claimed by Wallace. Accordingly, Wallace does not anticipate claim one under 35 USC §102(b). Applicant respectfully submits that claims 1-3, 5 and 6 are allowable.

Applicant respectfully submits that the specification, claims and drawings are now in proper form, and that the pending claims define allowable subject matter. Accordingly, applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully Submitted,



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2/3/2006  
Date

**Amendments to the Drawings:**

The attached sheets of drawings include changes to Figs. 2, 3, 3E, 3F, 5C, and 6A - 7C. These sheets, which include Figs. 2, 3, 3E, 3F, 5C, and 6A - 7C replace the original sheets including Figs. 2, 3, 3E, 3F, 5C, and 6A - 7C. In Fig. 2 previously omitted reference numerals 202 and 30 have been added. In Fig. 3 previously omitted reference numeral 30 has been added. In Fig. 3E previously omitted reference numeral 50 has been added. In Fig. 5C previously omitted reference numeral 14 has been added. In Figs. 6A, 6B, 7A, 7B and 7C previously omitted reference numerals 30 and 34 have been added. In Fig. 6C previously omitted reference numerals 30, 34 and 50 have been added.

Attachement:            Replacement Sheets  
                              Annotated Sheets Showing Changes

# ANNOTATED SHEET SHOWING CHANGES

Inventor: Wesley A. Bainter

Title: Trencher Unit, Docket 3120W

Application Date: 02042004, sheet 2 of 9

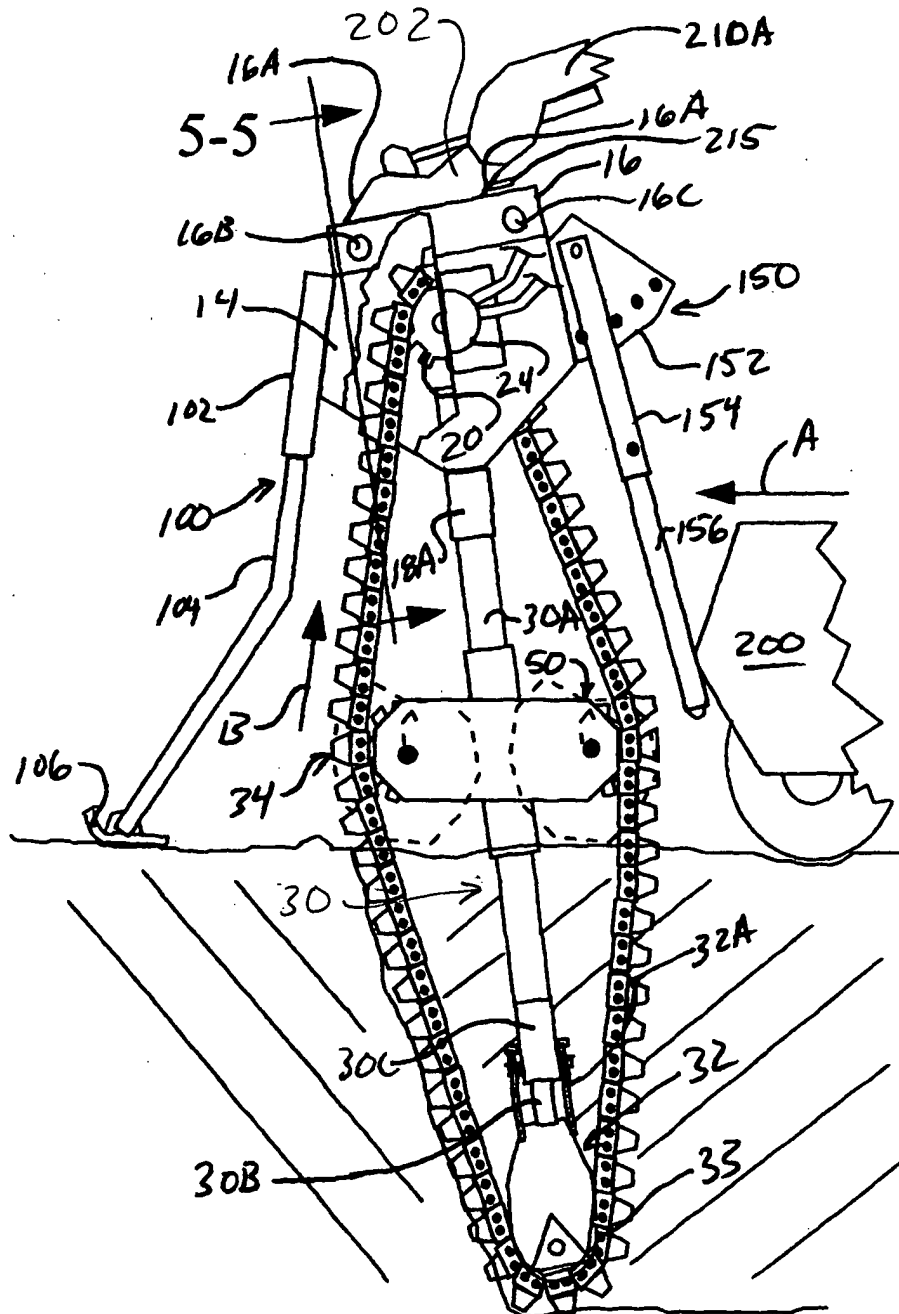
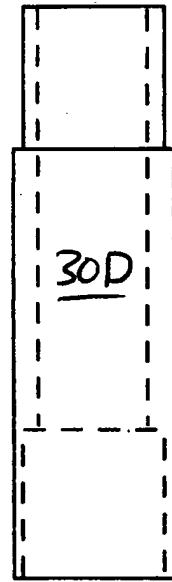


FIG. 2

**Inventor: Wesley A. Bainter**  
**Title: Trencher Unit, Docket 3120W**  
**Application Date: 02042004, sheet 3 of 9**

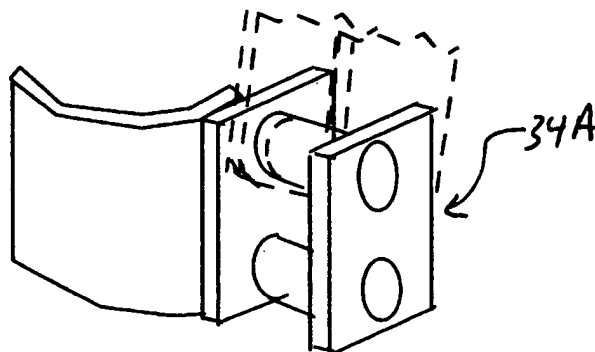
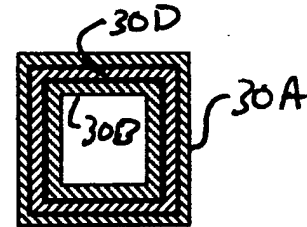
Application Date: 02042004, sheet 3 of 9



**FIG. 3A**



**FIG. 3C**



**FIG. 3D**

# ANNOTATED SHEET SHOWING CHANGES

Inventor: Wesley A. Bainter

Title: Trencher Unit; Docket 3120W

Application Date: 02042004, sheet 4 of 9

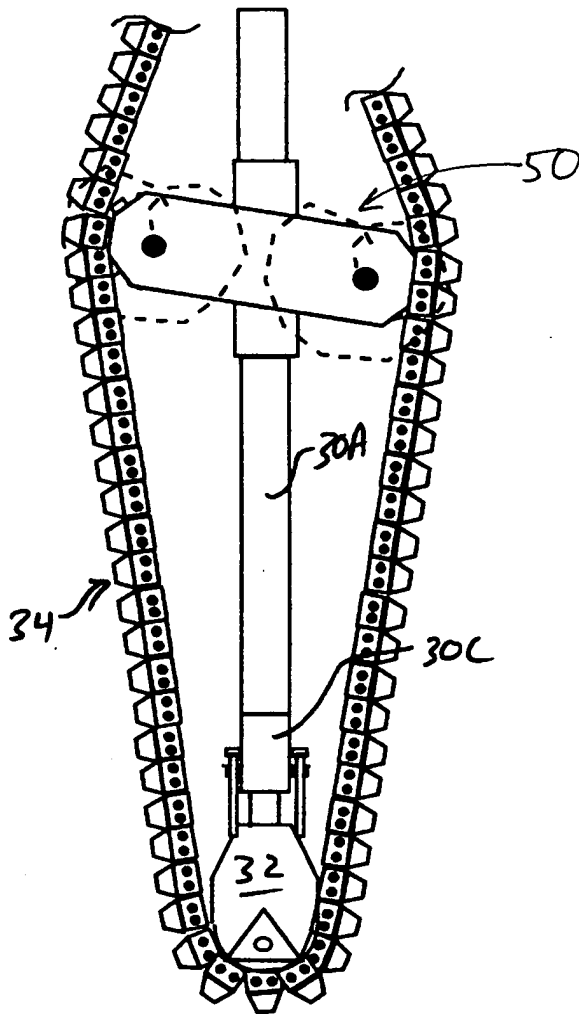


FIG. 3E

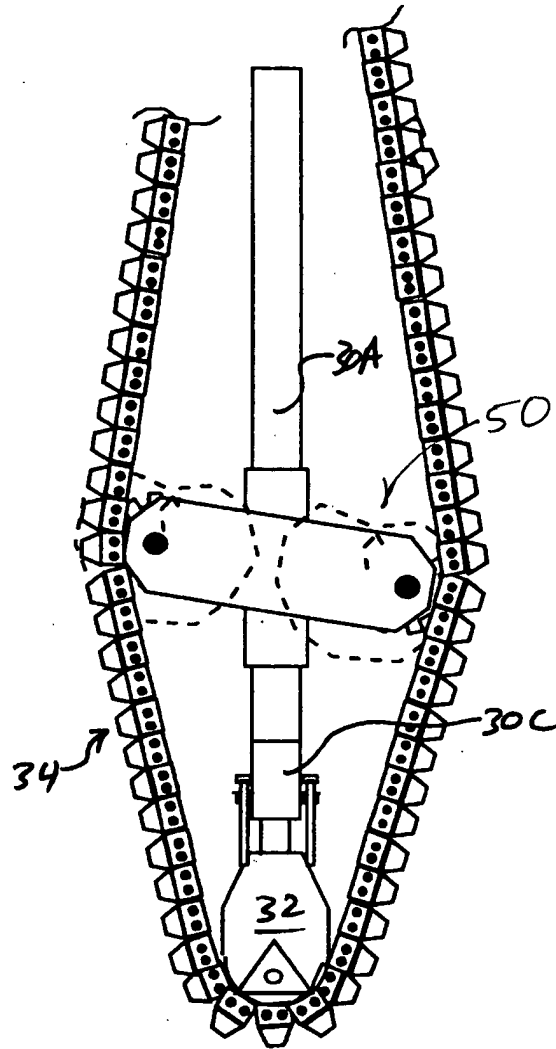


FIG. 3F

# ANNOTATED SHEET SHOWING CHANGES

Inventor: Wesley A. Bainter

Title: Trencher Unit, Docket 3120W

Application Date: 02042004, sheet 7 of 9

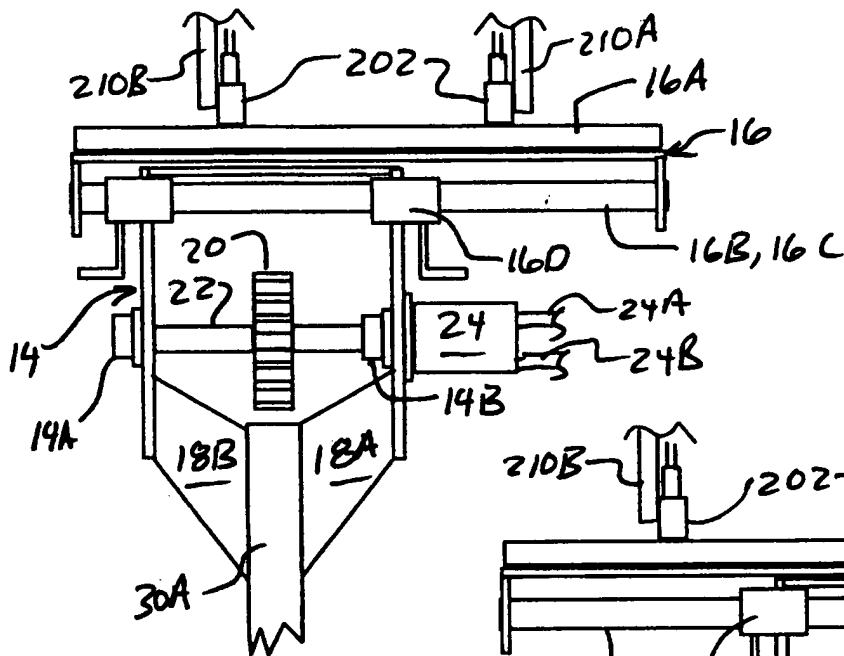


FIG. 5A

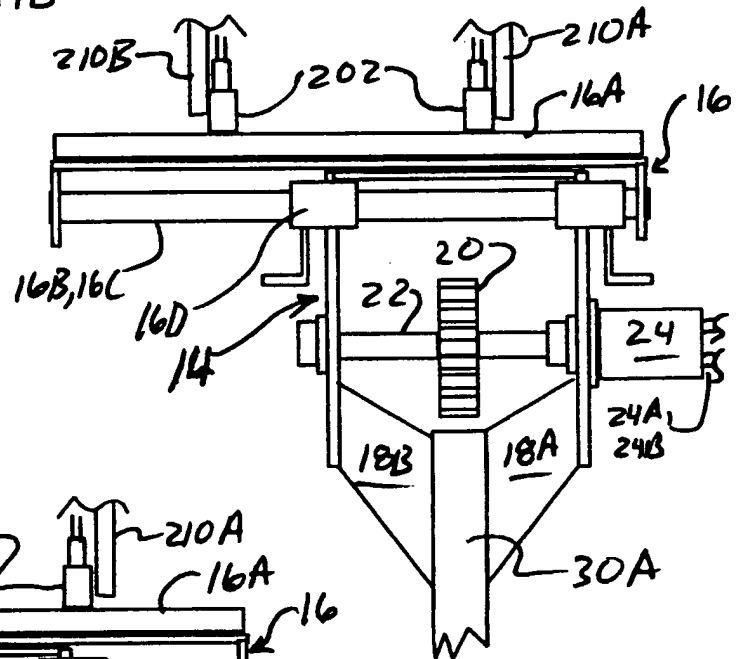


FIG. 5B

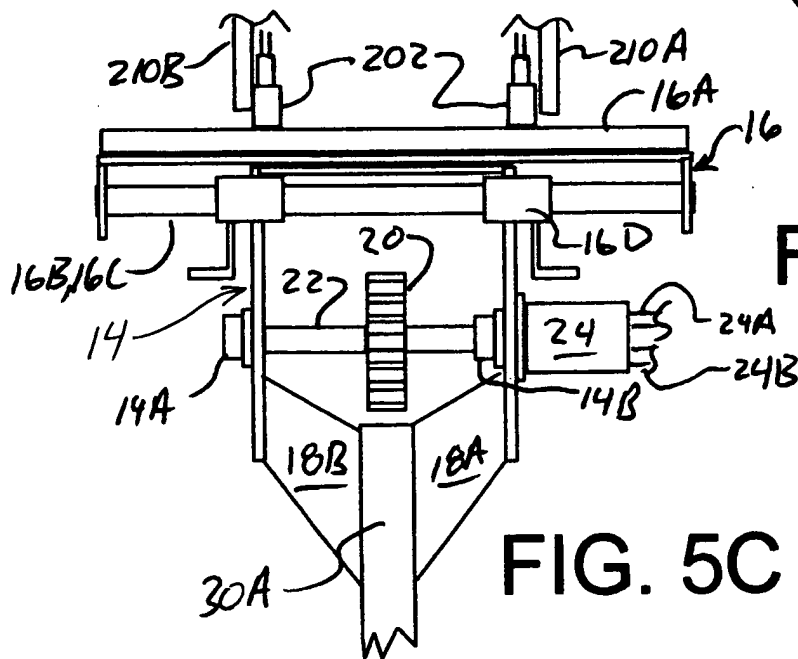


FIG. 5C



# ANNOTATED SHEET SHOWING CHANGES

Inventor: Wesley A. Bainter

Title: Trencher Unit, Docket 3120W

Application Date: 02042004, sheet 8 of 9

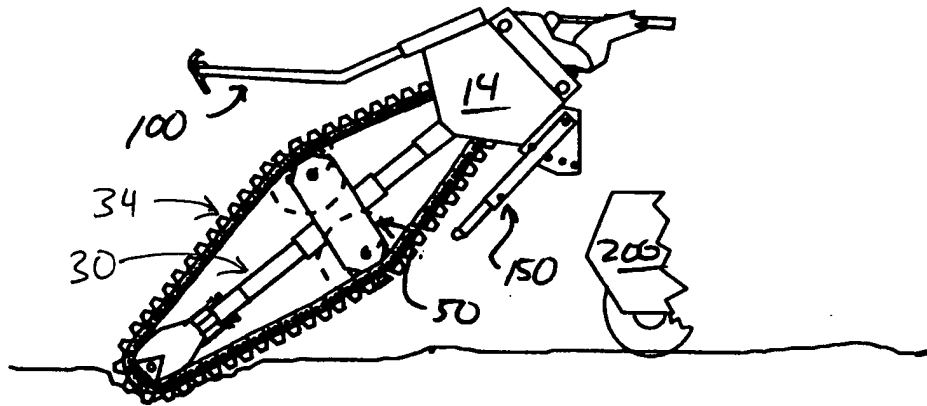


FIG. 6A

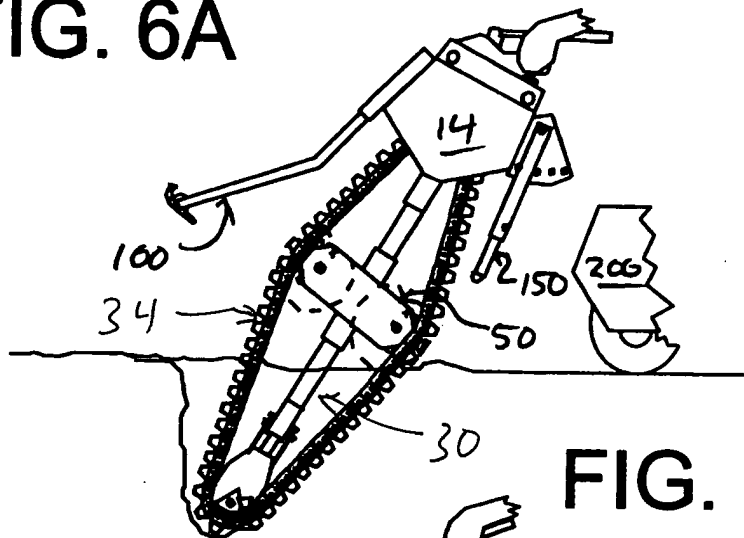


FIG. 6B

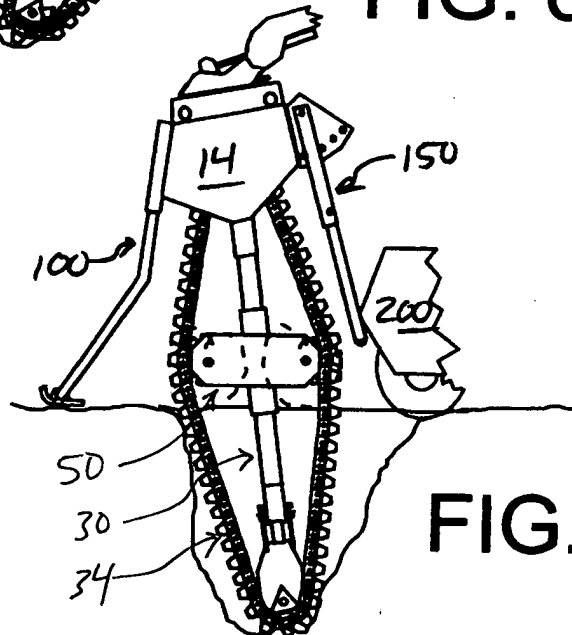


FIG. 6C

# ANNOTATED SHEET SHOWING CHANGES

Inventor: Wesley A. Bainter

Title: Trencher Unit, Docket 3120W

Application Date: 02042004, sheet 9 of 9

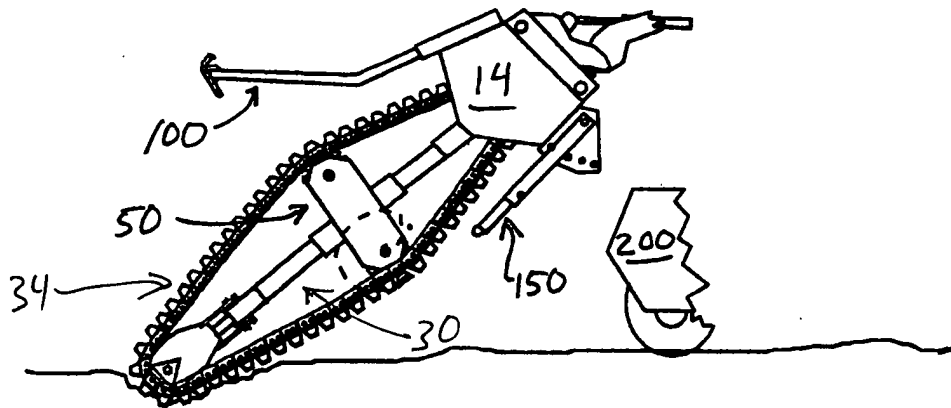


FIG. 7A

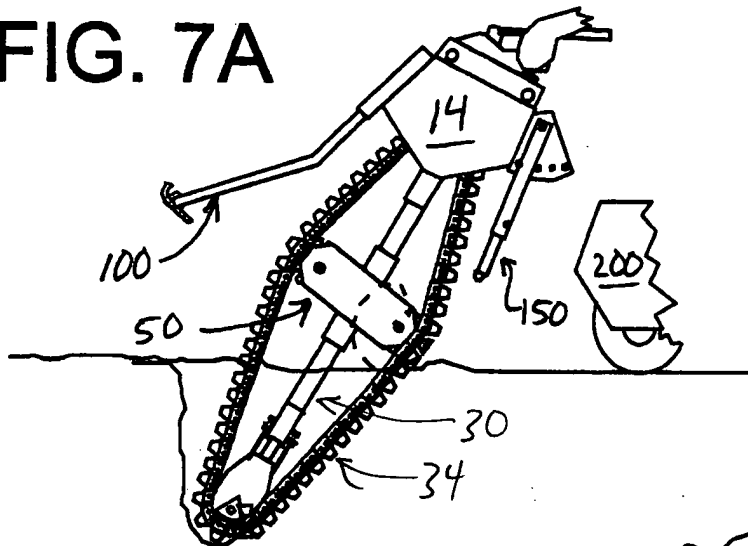


FIG. 7B

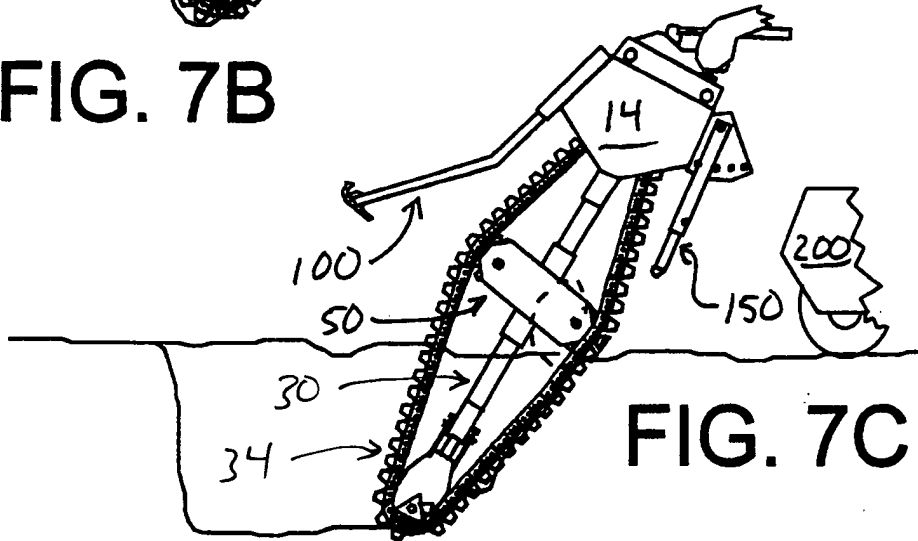


FIG. 7C